

Board of Selectmen Minutes

06/18/2012

**MINUTES
SELECTMEN'S MEETING
GRIFFIN ROOM, TOWN HALL
MONDAY, JUNE 18, 2012
7:00 P.M.**

SELECTMEN PRESENT: Ballantine, Cebula, Hughes, LaMantia, McManus

OTHERS PRESENT: Town Administrator James Merriam, Atty. Michael Ford, Atty. Joseph Cavanaugh, Scott Ridley, Mark McGowan, Carolyn Carey, and others.

MEETING CALLED TO ORDER at 7:00 p.m. by Chairwoman Cebula.

PUBLIC COMMENT/ANNOUNCEMENTS

Scott Ridley of 115 Kendrick Road said he would like to offer comments now on the agenda item regarding the re-appointment of Matt McCaffery to the Planning Board as it is unclear if comments would be taken when it comes up on the agenda. Mr. LaMantia said they could skip down to that item. He commented that the Interview Committee tried to deal with the facts only and not get into comments. Mr. Ballantine said they should try to be as transparent as possible but it is a sensitive issue that has become very personal. He commented that this is not a debating forum. Chairwoman Cebula pointed out that a couple of weeks ago the Board did allow people to speak on this issue. Mr. Hughes stated that he did not want to take the agenda item out of order and he would like to hear the report of the Interview Committee. He agreed with Chairwoman Cebula that they did have people making comments on this already. Mr. McManus said that the Public Comment period has always been for matters that were not on the agenda and at the time that people spoke on this issue it was not on the agenda. Chairwoman Cebula told Mr. Ridley that the Board will let him speak when they get to the agenda item.

CONSENT AGENDA

- A. Approve Minutes
 - 1. May 29, 2012 Regular Meeting
 - 2. May 29, 2012 Executive Session
 - 3. June 4, 2012 Executive Session

- B. Vote to approve Catch Basin Contract extension with Robert B. Our Company
- C. Vote to approve Craft Show permits for Harwich Cranberry Festival's Annual Brooks Park Craft Shows on July 7th and 8th; August 11th and 12th and on September 15th and 16th

Mr. Hughes moved approval of the Consent Agenda. Mr. Ballantine seconded the motion. Mr. McManus recused himself from Item C. The motion carried by a unanimous vote.

PUBLIC HEARINGS/PRESENTATIONS (7:00 P.M.)

- Public Hearing – Beach 22 (letters of opinion on file)

Mr. Ballantine read the hearing notice into record.

Mr. Ford explained that as Real Estate Counsel for the Town he has been asked to represent the Town with respect to a pending lawsuit in the Superior Court that deals with the validity of a road taking that occurred in 1972. He stated that in the course of his representation we have had settlement discussions of that lawsuit and as part of that were discussions involving a requirement that the Board of Selectmen no longer designate on their public website Beach 22 as a so-called public beach. He said it was the feeling of the Board that before they proceeded to resolve that litigation in a fashion that might involve no longer designating Beach 22 as a public beach, that they hold a Public Hearing as they want maximum public input before they made a decision.

Mr. Ford provided background on the issue as follows (note: This is not an exact transcript of Mr. Ford's report):

The Town's interest in real estate in this area dates back to 1924. In 1924 the Town was the recipient of 2 parcels of land in this area shown as lots 36 and 37 on the subdivision plan. They were lots that ran along Nantucket Sound adjacent to the layout of Beach Road, long, narrow stretches of land. They had a specific purpose in the conveyance that they be used as public bathing beaches and for a number of years they were used in that fashion. In 1972, Town Meeting authorized the then Board of Selectmen to lay out a section of a road shown on that plan called Beach Road and then the section was between Shore Road down to Nantucket Sound. The public beaches would be to either side to the end of Beach Road so in essence this stretch of Beach Road which would be primarily sand dune would result in public access to those 2 beaches. The Town Meeting authorized the taking and the taking was made by the Board of Selectmen, with reference to the Town Meeting article and a plan by Town Engineer Mr. Moran, and the description of Beach Road as it was laid out in 1972 was for lineal distance on either side 40 feet along Shore Road and then 40 feet along the waters of Nantucket Sound. It was

important in the fact that it was an easement. As a result of the taking the Town did not end up being the owner of the property, the ownership of the property remained in the 2 lot owners on either of the side and then the Town, to the extent that Beach Road split the 2 Town lots but it took an easement for all purposes for which ways are commonly used in the Town of Harwich. Normally when the Selectmen lay out a road they do so for the purpose of providing convenient and safe travel due to a public need. It appeared the driving force of laying it out was as access to the water and also to those 2 bathing beaches. It appears that nothing that I can determine substantial happened out there until some time in the mid 1990's at which time the property owner abutting the Town way to the east applied to the Conservation Commission to make certain improvements on their property and the question of whether those improvements could be made within the easement area was raised. The question was directed to Town Counsel James Falla who advised the Town that it was not Town land, the Town had never taken a fee in the right-of-way but only an easement. It was an easement and the legal question was whether the improvements would obstruct the rights that the Town had taken in 1972 as an easement to get to the Sound and public beaches to the extent that they remain recognizing that there had been considerable erosion in this area. The Conservation Commission permitted certain work to be done out there and those improvements went forward. In 2005 I was asked whether or not a property owner had a right to utilize certain portions of this Town laid out way to the water. I came to the same conclusions as Mr. Falla that it was an easement not a taking. In 2009 there were subsequent filings with the Conservation Commission and the Town with respect to efforts to re-nourish the area and the Conservation Commission granted approval. Around this time the Town began to advertise Beach Road as public beach 22 on its website. I am not sure of the genesis of that designation as a public beach. Subsequently in 2010 the Town was served a complaint filed in the Superior Court on behalf of the Fitzpatrick's, the property owners to the east. It sought 3 things – a request to the court to extinguish that easement as the Town had never used it as a road and never laid it out as a road, secondly was a declaratory judgment where parties come to the court with the Order of Taking and want the court to declare what their rights are, they were seeking that it was solely access to the Sound and should not be used or advertised as a public beach, and last was injunctive relief which dealt with whether the Town had a right to re-nourishment, no injunction was applied for so the question never reached the court.

It is now scheduled for a pretrial conference and with that on the horizon the Board of Selectmen through my offices have met with the Fitzpatrick's attorney, Mr. Viera, and have had a series of discussions about a resolution to the case. The Board of Selectmen wants to hear from you on the requirement in the resolution that the Town

drop the designation on its website as public beach recognizing that it is an Order of Taking for access to the water and not a public beach.

Attorney Joseph Cavanaugh appeared before the Board noting that he represented a number of people. Chairwoman Cebula stated that the Board has received numerous letters on this subject and has read them all. Mr. Cavanaugh stated that historically it has been used as a public beach mostly by neighbors as it doesn't have parking and not much has changed over the years as far as erosion since probably the taking in 1972. He said their main objective and goal is that they think this area should be the focus of as much attention the Board of Selectmen can give it as far as nourishment.

He stated that some of public beach 22 shows at least some portion of lot 36 as high and dry at the high tide mark and the rest of the beach is above water at low tide and given that reality he questioned if nourishment a possibility. He encouraged the Board to protect this asset and bring it back to life. He stated that the people want to continue to use this beach the way they have been accustomed to over many decades. He noted that the survey is somewhat limited as it does not continue to the west toward Pleasant Street so the plan is somewhat lacking in helping us figure out how far west the public beaches are. He said as he understands it, the Chase family left the beaches all the way to Pleasant Beach. Mr. Cavanaugh pointed out that the beach has already been removed from the website and he asked to see the settlement agreement before it is finalized.

Mr. Ford stated that it is important to

remember that this is not a lawsuit that the Town filed but rather the Town was sued by the Fitzpatrick's. He said that the ultimate disposition is not going to be an agreement for judgment, it is simply going to be, to the extent that it occurs, a stipulation for dismissal which will be filed without prejudice which means they could bring it again. He stated that the Board of Selectmen is considering long term to simply rename this area and not hold out what we took as a road way as a public beach.

Mr. Cavanaugh stated that the survey shows there is beach there and there is nothing to prevent anyone from using beach sand during low tide. He reiterated that he would like to see the settlement documents.

Mr. Ford stated that because the Board may be entering into an agreement without prejudice, the Town is not entering into agreement to waive or limit any of its rights but the Board might consider it if it were to be dismissal with prejudice.

Mark McGowan of 15 Rabbit Run asked what role the Town Administrator has in conjunction with the re-nourishment of the beach and the Conservation Commission's Order of Conditions. Mr. Merriam said the litigation has been holding us back and Mr. Ford confirmed that re-nourishment was part of the negotiations.

The Board took questions about the dredging process and priorities with regard to re-nourishment from Mr. Cavanaugh.

Mr. Ballantine asked Mr. Ford what the risks are of moving ahead with re-

nourishment. Mr. Ford said he has not been asked to opine on this. Mr. McManus moved to request Attorney Ford to do the legal research that was indicated. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

The Board took questions from Mr. John Solinski representing owners of 22 Beach Road.

Ellen McKenna thanked the board for their efforts.

Mike Fitzwilliam of 27 Pinewood Lane commented that his family has been going to that beach for 31 years and are good neighbors.

Mr. McManus stated that he was unaware that our website was changed but noted that there is a lack of parking in the area so it is not a viable beach for people to come from all over. He noted that we do have other areas along the water that have public access and those should be listed on the website as well as all the boat launching areas.

Audrey Healy of 28 Pine Needle Lane said she hopes the Board takes the responsibility of preserving this beach seriously and asked them to speed along the nourishment with whatever they can do.

Lisa Schurr of Pinewood Lane asked if now that it is an access route are they allowed to sit down on the beach. Mr. Ford responded that we have not agreed to any enforcement against anyone using the beach.

Mr. McManus said there have been several

matters that have come up at Board of Selectmen's meetings over the 8 years he has served on the Board and this is one of them that has continuously reappeared. He said that his position has always been that the Town should take whatever steps necessary to ensure that this remains a resource for the community and he sees the actions that they are taking and the directions that they are giving as steps necessary to begin a much more proactive set of actions in ensuring that we preserve that resource for the community and to do less would be beyond his beliefs.

Mr. McManus moved to close the Public Hearing. Mr. Hughes seconded the motion and the motion carried by a unanimous vote.

OLD BUSINESS

A. Surviving Spouse Health Insurance – *discussion*

Mr. Merriam reported that he was contacted by a number of voters indicating that there were confused as to how best to vote on this item and he questioned whether the Board would like to take any further action. Mr. Hughes commented that he doesn't think we did a great job educating people and as we have an upcoming opportunity we should bring it to a ballot again and maybe do a better job explaining it. Chairwoman Cebula pointed out that this issue was discussed on Channel 18. Mr. McManus stated that when you read the language you can conclude that the surviving spouse would have to pay the larger share if it passes. After discussion, the Board agreed that it should go to Special Town Meeting in August and to the ballot as well.

B. Monomoy Regional School District
draft lease – *discussion*

The Board discussed outstanding issues including insurance and landscaping care. Chairwoman Cebula instructed the Board to provide any additional comments to Mr. Merriam to send to Town Counsel.

C. Vote to approve reappointment of Matt McCaffery to Planning Board (letters of opinion on file) – *discussion/vote*

Chairwoman Cebula noted that all letters received on this subject have been read and taken into consideration.

Mr. LaMantia read the report of the Interview & Appointments Committee (see attached) after which he moved to reappoint Mr. McCaffery. Mr. McManus seconded the motion. Mr. Hughes stressed that Mr. McCaffery should read the letters and that was part of the charge to the Interview & Appointments Committee. He noted that Mr. McCaffery needs to understand what has been said. Mr. Ballantine stressed that the Chair needs to be respectful. Mr. LaMantia commented that he plans to attend all the Planning Board meetings. Chairwoman Cebula pointed out that this is not a new complaint about this individual and she stated that the Board should take comments from the audience. Mr. LaMantia responded that he strongly objected to taking comments as we have all the information we need and there is nothing new. Mr. McManus and Mr. Ballantine agreed. Chairwoman Cebula stated that it is only fair to have comments of

people not in favor as we did hear people speak in favor. She added that the public had an anticipation of making comments tonight. Mr. Hughes agreed with Chairwoman Cebula that they need to listen to people on the other side of the issue as well. Chairwoman Cebula said she would be opening the floor for comments and Mr. LaMantia interjected that he spoke to Mr. McCaffery today who instructed him to offer his resignation should there be public discussion. Mr. Hughes said he did not want to reward this behavior issue with another 3 year term and suggested a 1 year term if he was agreeable to work on his behavior.

Mr. Ridley said he was told during the public comment period that he would be allowed to speak on this at this time and now he is being cut off. Chairwoman Cebula agreed and said this is not sitting well with her. Mr. McManus said that Mr. Ridley was told he could speak by one member of the Board and it was not a vote. Mr. Ridley commented that this is a terrible process, it is gamesmanship, and they are trying to sweep things under the rug.

Chairwoman Cebula said they would hold the motion and have a motion on whether or not to take public comment.

Mr. Hughes moved to take up to 10 minutes of public comment that's relevant to the topic of how meetings are conducted, not the zoning issues in East Harwich. The motion was not seconded.

Mr. Hughes moved to amend the motion to limit the term to a one year term to expire

June 30, 2012. Mr. Ballantine seconded the motion and the motion to amend the main motion carried by a unanimous vote.

The main motion carried by a 3-2-0 with Mr. Hughes and Ms. Cebula in opposition.

- Vote to appoint Tom Gould as a full member to the Waterways Committee from alternate position effective July 1, 2012 through June 30, 2015 – *discussion/vote*

Mr. McManus read the recommendation (see attached) of the Interview & Appointments Committee. He moved to appoint Tom Gould as a full member to the Waterways Committee from alternate position effective July 1, 2012 through June 30, 2015. Mr. Ballantine seconded the motion and the motion carried by a unanimous vote.

NEW BUSINESS

A. Schedule Special Town Meeting for August 28, 2012 – *discussion/vote*

Mr. Hughes moved to schedule Special Town Meeting for August 28, 2012. Mr. McManus seconded the motion and the motion carried by a unanimous vote.

B. Schedule the Annual Non-Resident Taxpayers Meeting – *discussion on timing/ possible date: August 13, 2012*

The Board agreed to hold the Annual Non-Resident Taxpayers Meeting on August 6, 2012 in the Griffin Room.

C. Letter to ABCC from Selectmen –

discussion on role of Licensing Authority

Chairwoman Cebula noted that there was a letter sent to the ABCC regarding Perks after the Board voted stating all the reasons why the ABCC shouldn't give them the license. She noted that this proposed letter states that the official position of the Town of Harwich is that we approved the license and sending it is on the advice of Counsel.

Mr. Ballantine moved to send the letter. Mr. LaMantia seconded the motion and the motion carried by a unanimous vote.

**TOWN ADMINISTRATOR'S
REPORT**

Mr. Merriam delivered the following report to the Board:

FY 12 CDBG

Alice Boyd wrote a successful grant for \$997,412 for Dennis and Harwich residents for housing rehab, code ,safety and energy efficiencies and childcare subsidies.

Governor Patrick announced the grant on June 12th at Dennis Town Hall. Selectman McManus represented the Town in expressing gratitude for the grant.

Municipal LED Street Light Project

The attached list provides answers to the questions raised at our meeting on 18 May.~ Please contact me if you have additional questions or need clarification on the responses.

Our next steps for the project are the participation agreement and site selection for the demonstration installations.~ The dates

for those steps are:

- 29 June 2012 -- Demonstration Participation Agreement and cover letter sent from Maggie Downey to the Town Managers
- 31 July 2012 - Due date for the executed Participation Agreement and the list of demonstration sites to be returned to CLC

Additional notes on the demonstration site selection:

- CLC recommends selecting two sites: one residential and one commercial site
- There will be a total of 8 demonstration fixtures available for each town/fire district
- The demo fixtures will replace existing fixtures only
- The demo fixtures will replace comparable lumen size only
- The installations will be on consecutive utility poles
- There will be a minimum of 4 demo fixtures in any one location

When selecting the site, please be aware of any potential interference from ~foliage that may block the light.~ Also, when submitting the locations, please provide the street name, utility pole numbers and the lumen size.~ The lumen size is on the cobra head fixture, in large numbers, and will show as 50 (50 Watt), 70 (70 Watt), 10 (100 Watt) or 15 (150 Watt). Again, please contact me if you have any questions or need additional information.

Vicki Marchant

Commercial & Industrial Programs

Golf Committee change of meeting date

Jim - I am pleased to inform you that last night the golf committee voted to change our

meeting date monthly to the second
TUESDAY of each month at 5 PM!~ This
clears the way for dialogue between all
interested parties.~ A core agenda item for
our July 10th meeting will be a complete
year end budget review.
Clem Smith, Chair HGC

Red River Beach Dog rules (as of 6/12/12)
Jim,~~ just wanted to let you know that I
have supplied the sticker office with fliers to
hand out concerning the new dog walking
rules at Red River Beach.~
Eric

Community Garden update from Craig
Wiegand
This is to inform you that the handicap
garden areas have been repaired and are now
operational. We plan to replace the entire
irrigation system this fall.~ I know that the
invoice came in around \$13,000 and I
understand that you only have \$11,000 plus
to pay for this project. Our department will
make up the difference. I feel that by
replacing the irrigation system it will also
benefit ~the water department. I would like
to purchase the materials before our prices
go up in July

Monomoy Lease agreement
John Giorgio will be in attendance at your
6/25 meeting, so he can address Monomoy
Lease agreement.

MIIA rep Adriene Magnolia questions
related to lease
I have reviewed Article IX. ~I have the
following comments
Item B. Property Insurance.~ It states ~the
school district ~is to have a commercial
property policy covering the buildings. I

thought that the towns would continue to insure the buildings.

Item C. You can not add the towns as additional insured under workers comp. all you can show is evidence of insurance.

Item E . If a Builders Risk policy is~ needed. The town should be a ~named insured on the policy as the owner of the building ~

You may want to request~ Auto Liability ~including Hired and Non Owned Auto ired Hi~~ Insurance~ of \$1,000,000 for vehicles entering the premises ~~~~

You may want to request that the School has School Board Liability limit of \$1,000,000/ \$3,000,000

Please let us know if there are any questions.

Adriene Magnolia, AAI, AIS

Senior Account Executive - MIIA Member Services

Personnel

Peter VanRyswood has been hired as an Alternate Plumbing and Gas Inspector.

Harbors Study

The ad hoc group met on June 13th to review the Vine Associates draft report in order to list tasks and priorities. Bob Cafarelli indicated that the Cemetery Ground Penetrating machine can assist in determining the structural integrity of Wychmere Pier.

Waterways Committee

Matt Hart has been elected Chair. Attached is an e-mail from Matt outlining some harbor issues he wishes to address.

Rec Gift

Got some good news last night.~ Heard again from the Smile Mass Organization and they are going to donate a second brand new beach wheelchair to Harwich Rec.~ The second chair will be designated for Bank Street Beach.~ At Monday's BOS meeting the Board approved the gift of the first wheelchair; I will get a memo over to them as soon as possible to get the gift of the second wheelchair approved.~ I will be picking both chairs up on Friday at the pick up ceremony at Seagull Beach in Yarmouth.
Eric

Paul Doane

Paul has asked me to convey his wishes to step down as Cemetery Commissioner, given his other obligations. He is willing to continue serving until a replacement is found.

SELECTMEN'S REPORT

- Liaison appointments to committees, commissions and boards –
discussion

Mr. Ballantine agreed to be liaison to Youth Services as Mr. Hughes was unable to attend their meetings during the day. Mr. Waystack asked for a liaison for the Board of Assessors and Chairwoman Cebula said there should be one for the Finance Committee as well. Chairwoman Cebula asked each Board member to give up 2 committees and take on 2 new committees and get back to her.

- Selectmen's goals and responsibilities – *discussion*

Mr. Hughes stressed that the Chairperson speaks for the Board and Mr. Ballantine stated that letterhead should be used only for

official business.

Mr. Ballantine stated that the confidential issue mentioned in the Town Administrator's Report on transfer of public land should go on an agenda.

ADJOURNMENT

Chairwoman Cebula adjourned the meeting at 10:07 p.m.

Respectfully submitted,

Ann Steidel
Recording Secretary